

**REMARKS**

Claims 50 - 57 are currently pending. Claims 46 and 48 have been canceled. Claims 50-57 are new. The Specification has been amended.

Applicants have submitted herein a corrected IDS form.

Applicants believe all of the Examiner's formal objections are overcome by this response. Applicants therefore respectfully request withdrawal of the Examiner's objections.

Please cancel the Abstract and substitute therefore the new Abstract attached on a separate sheet.

Applicants now wish to proceed with the election of SEQ ID NO. 5 which includes the genomic sequence SEQ ID 4 and the enzyme that is encoded by SEQ ID NO. 6. Enclosed with Applicants response are experimental data that confirm the function of SEQ ID NO. 6 as an enzyme with PDAT activity encoded by the gene disclosed in SEQ ID NO. 4 and in SEQ ID NO. 5.

**Claim rejections under USC 35 § 112**

The Examiner believes the term "homolog" is not disclosed in the Specification. The term "homolog" is well understood by one of ordinary skill in the art. Additionally, the Examiner is directed to the paragraph beginning on page 5, line 30, of the instant Specification wherein a description of the term "homolog" is provided. The Examiner also believes the term "isoenzyme" is not disclosed in the Specification. The term "isoenzyme" is well understood by one of ordinary skill in the art. The Examiner is directed to page 6, line 18, of the Specification wherein a description of the term "isoenzyme" is provided.

The Examiner believes there is a lack of support for the genus of nucleotides related to SEQ ID NO:1. Applicants respectfully disagree. Applicants urge that the nucleotide sequences

disclosed on pages 20 and 28-29 of the instant Specification constitute disclosure of a representative number of species to describe the genus.

The Examiner believes that the term "about" in the phrase "at least about" is a relative term that renders the claims infinite. MPEP section 2173.05(b) does not require terms to be exactly clear but merely clear enough for one of ordinary skill in the art to well understand. Additionally, the section, in part, states

claims reciting "at least about" were invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term "about." *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991).

The Examiner is directed to page 6, lines 9-13, wherein the Specification of the instant invention provides indication of the range of specific activity that is covered by the term "about."

#### **Claim rejections under USC 35 § 102 (b)**

Claims 46 and 48 were rejected USC 35 § 102 (b) as allegedly being anticipated by Lardizabal et al. Applicant respectfully submits that Lardizabal et al. does not teach or suggest numerous recitations of the independent Claims of the instant invention. This rejection is hereby respectfully traversed.

The Examiner believes the reference teaches transgenic host cells that express nucleic acids encoding diacylglycerol acyltransferases to modify triacylglycerol levels in a fatty acyl-CoA dependent manner. In contrast, the instant invention discloses that catalysis occurs with the transfer of fatty acids from phospholipids to diacylglycerol in the production of triacylglycerol through an acyl-CoA independent reaction. New Claims 50 and 52 recite said limitation and thus, would not be anticipated by Lardizabal et al

Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). The identical invention must be

shown in as complete detail as it is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

For at least the reasons set forth above, the Claims of the instant invention are not anticipated by Lardizabal et al.

### **Claim rejections under USC 35 § 103 (a)**

To establish *prima facie* obviousness, the examiner must show in the prior art some suggestion or motivation to make the claimed invention, a reasonable expectation for success in doing so, and a teaching or suggestion of each claim element (*see, e.g., In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

Applicants have added Claims 54-57 which recite the isolation of triacylglycerol. The Examiner's proposed combination fails to disclose or teach isolating triacylglycerol.

For at least the reasons expressed above, it is urged that the prior art references cited by the examiner either singly or in combination fail to anticipate or suggest the present invention as defined by the amended claims. Accordingly, a *prima facie* case of obviousness has not been established by the Examiner and the rejection under 35 USC § 103 should be withdrawn.